IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6727 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI MAVJIBHAI MALAM

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioners

MR MA BUKHARI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 23/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioners for an appropriate writ, order or direction, quashing and setting aside the order dt. October 28, 1987 passed by the Collector, Junagadh -respondent no.2 herein and also an order dt. December 31, 1988 passed by the State

Government in revision application which has caused prejudice to the petitioners.

2. The case of the petitioner was that he was the owner of the land bearing Survey No. 83 admeasuring 1 Acre - 34 Gunthas situated in the city of Veraval. The land belonged to the wife of the petitioner no.1 and mother of the petitioner nos. 2 to 6. After the death of wife of petitioner no.1, the land was mutated in the name of all the petitioners and thus they became co-owners. As stated by the petitioners, there was a Town Planning Scheme for the city of Veraval, wherein the land bearing Survey No.83 was covered. In view of the Town Planning Scheme, an application made by the petitioners for conversion of the land into non-agricultural, was not granted at the relevant time by the Collector, Junagadh. The petitioners have stated that they came to know that Survey No.83 was given final plot Nos. 284, 285 and 54. According to the petitioners, actual and physical possession of final plot Nos. 284 and 285 was given to the petitioners but not of final plot No.54. For final plot No. 284, permission for Non-Agricultural use was granted on November 7, 1984, whereas for final plot No.285, such permission was granted on 15th October, 1984 on certain terms and conditions. One of the terms and conditions provided that the petitioners must start construction work within a period of three months from the grant of permission and the construction must be completed within three years. It appears that inspite of clear conditions, the petitioners neither started the construction, nor completed the same within the stipulated period. In the circumstances, a notice was issued on 14th March, 1987 (Annexure: G to the petition), asking the petitioner to show cause why Non-Agricultural permission should not be cancelled and appropriate proceedings should not be initiated for breach of the terms and conditions by the petitioners. The Collector, vide his order dt. October 28, 1987, held that the petitioners had committed breach of conditions of construction. It may be appropriate to state at this stage that the petitioners approached the Collector and prayed for extension of time which was granted. At the time of hearing also, they prayed for further time stating that there were communal riots and drought in the intervening period. The Collector accepted the case of the petitioners and recorded specific findings that in the facts and circumstances of the case, it was reasonable to extend time and accordingly, the time was extended for further period of one year on condition that the petitioners must start construction on or before November 30, 1987. The said

order was passed on October 28, 1987. Thus, under the order passed by the Collector, the petitioners were required to start construction work within about one month and to complete the same within one year.

6. Being aggrieved by the above order, the petitioners preferred revision application before the State Government. The State Government, in the revision application observed that if the petitioners were of the view that no construction was possible, they could not have made any application for Non-Agricultural use of land. But once they made an application, it was incumbent upon them to start the construction and complete it within the stipulated period. It was not open to the petitioners thereafter to ignore the conditions imposed in the order. In the light of above observations, the Additional Chief Secretary (Appeals), Revenue Department, not only dismissed the revision application filed by the petitioners, but set aside the order, granting extension of time, passed by the Collector holding that it was not open to the Collector to do so. The said order is challenged in the present petition.

7. The petition was admitted on December 22, 1989. Ad-interim relief was also granted against the order passed by the Additional Chief Secretary. To-day, the matter is called out for final hearing.

8. I have heard Mr.J.M.Patel, learned counsel for the petitioners and Mr. M.A.Bukhari, learned Assistant Government Pleader for the respondents.

9. Mr. Patel raised several contentions. He stated that the petitioners had already disposed of the land by dividing it into plots and sub-plots. Final plot No. 285 was divided into 19 sub-plots, and Final plot No.284 was divided into 11 sub-plots. On January 3, 1985, 24 sub-plots were transferred by the petitioners. Similarly, on 3rd July, 1986, remaining six sub-plots were also transferred. Mr. Patel submitted that in view of transfer of plots by the petitioner, it was not open to the respondent no.1 to issue show cause notice to the petitioners, and therefore, the proceedings were vitiated.

10. He also submitted that it was the case of the petitioners that physical and actual possession of final plot No.54 was not given to the petitioners. Similarly, inspite of several demands, no Sanad was granted in favour of the petitioners. In view of the above two

facts, it was not possible for the petitioners to start the construction work and, hence, it cannot be said that the petitioners had committed breach of conditions. On these grounds also, the orders are liable to be quashed and set aside.

11. Finally, he contended that even if the State Government was of the opinion that the revision application filed by the petitioners did not deserve to be allowed and no relief could be granted in favour of the petitioners, at the most the revision could have been dismissed. No order adverse to the petitioners, however, could be passed in the revision filed by them. To that extent, in any case, the order passed by the State Government requires to be interfered with.

12. Mr. Bukhari, learned Assistant Government Pleader supported the orders passed by the authorities. He submitted that the State Government was justified in holding that in the facts and circumstances of the case, the Collector could not have extended time. He urged that when the State Government exercising revisional powers, it was open to pass such order as it deemed fit. The petition, therefore, deserves to be dismissed.

13. In my opinion, the petition deserves to be partly allowed.

14. Regarding first contention of Mr. Patel, in my view, there is no substance in the argument. If it was the case of the petitioners that the lands were disposed of in 1985, and the petitioners were no more interested, it was open to them not to appear before the Collector and not to raise any objection against the show cause notice. In that case, law would have taken its own course. Reading the record of the petition, it is clear that the petitioners not only appeared before the authority but prayed for extension of time pleading circumstances under which it was not possible for them petitioners to do construction work. It, therefore, does not lie in the mouth of the petitioners now to contend that the proceedings could not have been initiated against them. The said contention, therefore, has to be negatived and accordingly negatived.

15. Regarding second contention, it is clear that the Collector passed the order directing the petitioners to start construction within a period of one month and to complete the same within a period of one year. Before the Collector, nothing was stated regarding handing over

of the physical and actual possession of Final Plot No. 54. On the contrary, looking to the statement made by the petitioners, it was clear that the circumstances which were pointed out by them were drought and communal riots in the city of Veraval. Taking into account both of them, the Collector observed that it was in the interest of justice to grant some more time, and accordingly, extension was granted. It was, therefore, not open to the petitioners to ignore the said order, and not to start and complete the construction work as stipulated in the said order on the ground that possession of Final Plot No.54 was not given to them.

16. But the grievance of Mr. Patel is justified so far as the order passed by the State Government is concerned. Without expressing any opinion, whether the State Government in exercise of revisional jurisdiction, could have set aside the order passed by the Collector, in my opinion, when the Collector extended the period on the ground of drought and communal riots in the city of Veraval, there was no reason to interfere with the said order. The revisional authority ought not to have interfered with the order passed by the Collector, by setting aside a part which was in favour of the petitioners. Hence, to that extent, the order of the State Government deserves to be quashed and set aside.

17. For the foregoing reasons, the petition deserves to be partly allowed and is accordingly allowed. The order dt. December 31, 1988 passed by the Additional Chief Secretry (Appeals), Revenue Department, is hereby quashed and set aside and the order dt. October 28, 1987 passed by the respondent no.2 -the Collector, Junagadh is hereby restored. So far as construction is concerned, it goes without saying that the petitioners have now to start the construction work within a period of one month from today and will have to complete the same within a period of one year. Rule is made absolute to the aforesaid extent. In the facts and circumstances, there shall be no order as to costs.

Date: 23/3/2000. (C.K.THAKKER, J.)
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